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FEDERAL COMMUNICATIONS COMMISSION
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BY HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W. Room 222
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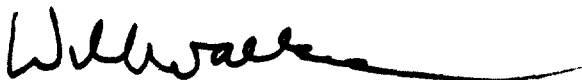
RE: IB Docket No. 95-117

Dear Mr. Caton:

Transmitted herewith for filing with the Commission on behalf of Loral/QUALCOMM Partnership, L.P., are an original and five copies of its "Reply Comments" in the above-referenced docket.

Should there be any questions regarding this matter, please communicate with this office.

Respectfully submitted,



William D. Wallace

Enclosure

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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Streamlining the Commission's)
Rules and Regulations for Satellite)
Application and Licensing Rules)

IB Docket No. 95-117

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REPLY COMMENTS OF
LORAL/QUALCOMM PARTNERSHIP, L.P.

LORAL/QUALCOMM PARTNERSHIP, L.P.

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IB Docket No. 95-117

REPLY COMMENTS OF
LORAL/QUALCOMM PARTNERSHIP, L.P.

Pursuant to Section 1.415 of the Commission's Rules (47 C.F.R. § 1.415),
Loral/QUALCOMM Partnership, L.P. (LQP), hereby submits its reply to comments
filed on October 4, 1995 regarding the Notice of Proposed Rulemaking (NPRM),
FCC 95-285 (released August 11, 1995), in this proceeding.

SUMMARY

The comments generally indicate support for the proposals in the NPRM
regarding streamlining the Commission's procedures for filing and processing
space and earth station applications. These proposals should be adopted.

Although many parties support adoption of a blanket waiver for the
construction requirement of Section 319(d) of the Communications Act of 1934,
LQP reiterates its recommendation that this proposal and the policies which
would govern pre-authorization construction be deferred to the comprehensive
review of satellite licensing policies recently initiated by the International Bureau.
The commenting parties point out a number of concerns with the blanket waiver

which merit consideration in a proceeding more focused on satellite licensing issues.

The revisions to certain technical rules in Part 25 suggested by Motorola cannot be considered at this time. Modifying the substantive standards in these rules is beyond the scope of this proceeding, and thus would require a further NPRM. In any event, the Commission has not given notice of the rules proposed by Motorola, and adoption of any of its suggestions based on the limited record in this proceeding would violate the Administrative Procedure Act. If the Commission does adopt a further NPRM, it should consider the proposal of AT&T and GE Americom to provide flexibility in the length of space station license terms.

Accordingly, while LQP supports and recommends adoption of the modifications to the application procedures proposed in the NPRM, it strongly urges the Commission not to use this limited proceeding to accomplish what would be at most a piecemeal and ultimately ineffective revision to its policies on satellite licensing and rules governing system operations.

I. THE COMMISSION SHOULD ADOPT ITS PROPOSALS TO
STREAMLINE APPLICATIONS FILED UNDER PART 25.

Most parties commenting on the Commission's proposals to streamline space and earth station application procedures support the proposed modifications to Part 25 to eliminate redundant and/or unnecessary information requests and to clarify other requests for information to be included in applications.¹ See, e.g., AT&T Comments, at 3-4; Motorola Comments, at 5; LQP Comments, at 5-8. Moreover, all parties commenting on the issue support adoption of the Commission's new Form 312 for space and earth station applications. See, e.g., Motorola Comments, at 6-7; Hughes Network Systems Comments, at 8-9; LQP Comments, at 9-11.

Accordingly, these proposals to streamline and make more effective the information requests in the rules and to implement the new application form should be adopted, with the minor changes noted by LQP in its initial comments. See LQP Comments, at 5-11.

II. THE COMMISSION SHOULD DEFER CONSIDERATION OF RULES FOR
BLANKET CONSTRUCTION WAIVERS TO THE INTERNATIONAL
BUREAU'S REVIEW OF SATELLITE LICENSING POLICIES.

In the NPRM, the Commission proposed to adopt a blanket waiver of the requirement of Section 319(d) of the Communications Act of 1934, as amended (47

¹ LQP agrees with Motorola that the Commission must continue to enforce strictly its financial standards for space station applicants "irrespective of the information it requires for the application." Motorola Comments, at 5.

U.S.C. § 319(d)), that each space station applicant obtain specific authority to commence construction of satellites. Under this proposal, space station applicants would be permitted to begin constructing satellites at their own risk on filing written notice with the Commission. NPRM, ¶¶ 7-8. In its comments, Motorola suggested extending this policy to gateway earth stations to be associated with MSS or FSS networks. Motorola Comments, at 3. For the reasons stated in its initial comments, LQP recommends that both these proposals should be deferred to the International Bureau's proceeding to update and revise the Commission's satellite licensing policies. See Public Notice, Report No. IN 95-25.

A. Space Stations. Most commenters support the Commission's proposed blanket waiver of Section 319(d) for space stations. However, despite this support, many express concern about potential misuse of the blanket waiver to the detriment of other applicants and about the lack of standards for the proposed waiver. GE Americom recommends that applicants should not be allowed to begin construction until an underlying application is on file so as to prevent spectrum warehousing. GE Americom Comments, at 3-4; see also Orbital Sciences Comments, at 2 (expressing concern that applicants might attempt to transfer pre-authorization construction risks back to the Commission). Motorola requests that the Commission insure that applicants have a "minimally acceptable application" on file to avoid "truly speculative construction." Motorola Comments, at 3. And, Hughes Communications Galaxy states that clarification would be necessary on the issue of when "construction" commences. Hughes Galaxy Comments, at 2.

LQP shares these concerns about the proposal, and for these and other reasons stated in its initial comments, recommends that consideration of the blanket waiver be deferred to the comprehensive review of satellite licensing policies initiated by the International Bureau. LQP Comments, at 3-4. The Commission's primary rationale for adopting a blanket waiver of Section 319(d) for space stations is that "[t]he process of licensing a new satellite often takes years, especially where no frequency allocation exists." NPRM, ¶ 8. As LQP pointed out in its comments, waiving the construction authority requirement of Section 319(d) does not address the institutional delays in licensing satellite systems. LQP Comments, at 4. Moreover, the concerns expressed by other parties that abuse may arise from the blanket waiver confirm that the proposal requires more comprehensive consideration than simply eliminating the requirement to obtain construction authorization. The proceeding initiated by the International Bureau would provide a better forum for consideration of the circumstances under which it would be appropriate to eliminate the construction authorization requirement.

Even if a blanket waiver were adopted, the Commission should consider how the new policy is to be applied to avoid the dangers noted by other commenters. For example, applicants which have commenced construction of space stations may become less flexible in coordinating operations with other domestic applicants, thereby "warehousing" through delay spectrum which has not even been authorized. Furthermore, a blanket waiver may have an impact on other rules and policies, which have not yet been analyzed. For example, the

Commission's financial qualification standards for domestic Fixed-Satellite Service systems require that an applicant demonstrate its financial ability to construct and launch the entire constellation and to operate the satellite system during its first operational year. 47 C.F.R. § 25.140. If an applicant is "constructing" satellites *at its own risk*, then the question is likely to arise whether the applicant must include those costs in its financial showing. If not, then more applicants may be able to satisfy the Commission's strict financial standard, potentially increasing the number of failed systems, again with the effect of causing spectrum to lie fallow. See MSS Above 1 GHz Report and Order, 9 FCC Rcd 5936, 5948 (1994).

LQP recommends that the Commission move forward on the proposals for streamlining space and earth station application procedures. However, the blanket waiver of Section 319(d) raises a number of issues outside the scope of the NPRM. Accordingly, the decision on whether a blanket waiver of Section 319(d) is warranted should be deferred to the International Bureau for consideration with revisions to the current satellite licensing policies.

B. Earth Stations. Motorola suggests in its comments that the Commission apply a similar blanket waiver policy for construction of earth station complexes that serve as control points and/or gateways for MSS and FSS systems on the theory that the same concerns for avoiding delay which exist for space stations exist for gateway earth stations. Motorola Comments, at 3. While the interest in expediting new services is applicable to both space and earth stations,

a blanket waiver in either case raises concerns beyond the scope of this proceeding. For example, if it were necessary to coordinate siting of gateway earth stations, an applicant which has constructed its stations would have a significant financial stake in not modifying its site selections, and, as a result, may have less flexibility in coordination. Accordingly, if this proposal is deemed to merit further consideration, it also should be deferred to the International Bureau's review of satellite licensing procedures and policies.

III. THE COMMISSION SHOULD ADOPT A NOTICE FILING REQUIREMENT FOR MINOR SPACE STATION AMENDMENTS.

In the NPRM, the Commission proposed to eliminate the need to seek prior authority before making "minor" changes to earth stations.² NPRM, ¶ 23. As an extension of this proposal, Motorola recommended that the Commission consider permitting minor modifications to space stations on notification. Motorola Comments, at 8. LQP agrees with Motorola that extending such a change to space stations would benefit licensees by eliminating the burden of filing minor amendment applications and would not prejudice other licensees if the policy were limited to modifications which have no impact on coordination with other systems. As Motorola pointed out, requiring operators to request authority to make changes "that, by definition, have no impact on other operators is a needless waste of

² Hughes Network Systems noted that proposed Section 25.118(a) is unclear. Hughes Network Systems Comments, at 5-6. LQP recommends that "any" be inserted before "notification" to make clear that equipment may be replaced with electrically identical equipment "without prior authority or any notification."

time." Motorola Comments, at 8. Accordingly, LQP recommends that the Commission consider adopting a policy of allowing on notification minor technical amendments to space stations as long as such modification does not modify existing coordination parameters or increase the potential for harmful interference into other systems.

IV. THE COMMISSION SHOULD NOT REVISE THE PART 25 TECHNICAL STANDARDS IN THIS PROCEEDING.

Motorola requests that the Commission "adopt a clarifying amendment" to Section 25.202(f) regarding emissions limits. Motorola Comments, at 11. Motorola suggests that such amendment would account for "various modulation techniques, multiple access techniques (such as CDMA, TDMA, and FDMA), multiple carrier systems, varying carrier bandwidths and systems employing power control to overcome attenuation due to atmospherics." Id. However, Motorola offers no concrete proposals for such an amendment.

Similarly, Motorola requests clarification that the antenna performance standards in Sections 25.209, 25.132 and 25.210 are meant to apply to earth station antennas used with geostationary satellite systems but not with non-geostationary satellite systems. Motorola Comments, at 11-12. It urges the Commission "to determine what performance standards and requirements should apply to NGSO earth station antennas." Id.

It is inappropriate for the Commission to undertake such revisions to the technical standards in Part 25 in this proceeding.³ First, this proceeding is primarily limited to the streamlining of space and earth station application rules. Motorola's proposals regarding Part 25 technical standards raise completely different issues, including substantive revisions to the technical rules governing operation of space stations. Modification of these technical rules could not be deemed a "logical outgrowth" of the rules proposed in the NPRM. See, e.g., National Black Media Coalition v. FCC, 791 F.2d 1016, 1022-23 (2d Cir. 1986) ("the comments of other interested parties do not satisfy an agency's obligation to provide notice"); Natural Resources Defense Counsel v. EPA, 824 F.2d 1258, 1284-86 (1st Cir. 1987). If the Commission considers these issues, then it should do so in the context of a separate NPRM on technical rules for space station operations.

Moreover, the NPRM provides no basis for comment on either data or analyses underlying the emissions limits or antenna performance standards on which to develop revisions to these rules. Without such information, the Commission cannot fulfill the notice and comment requirement of the Administrative Procedure Act. See 5 U.S.C. § 553(b); National Black Media Coalition v. FCC, 791 F.2d at 1023. Therefore, Motorola's proposals cannot be adopted in the context of this NPRM.

³ Motorola also recommends modification of Section 25.204(e) regarding power control limits for operation at frequencies above 10 GHz. Motorola Comments, at 10-11.

V. THE COMMISSION SHOULD CONSIDER A FLEXIBLE TERM FOR SATELLITE LICENSES CONSISTENT WITH THE TYPICAL LIFESPANS OF SATELLITES.

Both AT&T and GE Americom ask the Commission to modify its rule granting a ten-year license term for space stations. AT&T proposes that the Commission consider extending satellite license renewals for a period of at least two years since newer satellites have a design life of twelve years. AT&T Comments, at 5-6. GE Americom requests that the Commission consider allowing satellite operators to extend their operating licenses beyond the ten-year statutory maximum, noting that the Commission "has traditionally recognized the value to customers of maintaining in orbit a satellite that has not reached the end of its in-orbit service life by almost invariably grant[ing] such operations with little discussion." GE Americom Comments, at 5.

LQP agrees with AT&T and GE Americom that the fixed ten-year term for satellite licenses is inconsistent with the typical lifespan of a satellite. However, LQP is concerned with space stations with shorter lifespans than 10 years. Under the current notice renewal procedures, when the lifespan of a satellite is shorter than ten years the operator may be forced to launch and operate technically inferior first-generation satellites to fill out the 10-year term. Consequently, LQP suggests the Commission modify its renewal policy to allow for flexibility in renewing satellite licenses and consideration of the practical implications of satellite lifespans on the timing of authorizations for second-generation replacement systems.

If the Commission considers this proposal, then LQP recommends that it should propose a rule which would allow licensees flexibility to apply for replacement satellites when necessary within, for example, a certain span of years after commencement of operation. LQP has proposed to revise Section 25.120(e) for MSS Above 1 GHz licensees, to read:

A licensee seeking to replace a non-geostationary satellite constellation with a constellation of technically-improved satellites should file an application two years prior to the desired replacement date. A new license term will begin at 3:00 a.m. on the date the licensee certifies to the Commission that its operations have been transferred to the constellation of technically-improved replacement satellites.

See LQP's Petition for Clarification and Partial Reconsideration in CC Docket No. 92-166, at 19-22 (filed Nov. 21, 1994). To accommodate systems with satellite lifespans longer than 10 years, the Commission could provide an extension of license after filing of a replacement system application until action has occurred on the application. If the Commission adopts such a proposal, licensees and Commission staff could coordinate the filing of second-generation systems to provide the maximum benefit to the public. The rule would also be liberal enough not to preclude an operator from launching technically-identical replacement satellites during the ten-year license term. Both the market and individual licensees would best be served under such a plan.

VI. CONCLUSION

LQP recommends that the Commission adopt rules which are consistent with the recommendations in its initial comments and in the above reply comments.

Respectfully submitted,

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Date: October 25, 1995

CERTIFICATE OF SERVICE

I, William D. Wallace, hereby certify that I have on this 25th day of October 1995, caused copies of the foregoing Reply Comments of Loral/QUALCOMM Partnership, L.P. to be delivered via first-class mail, postage prepaid or via hand delivery (indicated by an *) to the following:

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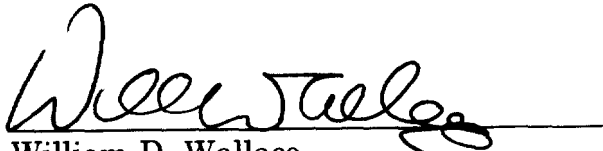
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